IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 374 OF 2007

1. Darbar Jetha Marandi
2. Shivkumar Jamunaprasad Tiwari
3. Chandrikaprasad Chintamani Tripathi
   At present in Thane Central Prison ..Applicant

V/s

The State of Maharashtra ..Respondent

Mr. J.H. Giri, Advocate for the applicant.

Mr. U.V. Nikam, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 2ND MARCH, 2007.

P.C.

. Heard Mr. Giri, learned Counsel for the applicants and Mr. Nikam, learned APP for the State. Perused the police papers. The applicants seek to be released on bail in Crime No.423/2006, registered at Panvel City Police Station for the offence punishable under section 302 r/w section 34 of Indian Penal Code.

2. The prosecution case, in brief, is that deceased Adbul Samad had entered into the premises of Express Repairs Services Company with intent to commit theft from the stock of the scrap. when he was putting scrap

in a gunny bag, some persons from the staff of the company saw him and as soon as the staff members gave a call, he tried to run away but he was caught by one Sandeep Bhopi, an employee of the company. He informed his other colleagues on a phone and thereafter he took said Samad to the main gate of the company and handed over the said person to the security guards on duty. The present applicant No.1 Darbari, was the Security Supervisor, while applicant No. 2 Shivkumar Tiwari and the applicant No.3 Chandrikaprasad Tripathi, were security guards on duty during that night. After taking him in custody, the present applicants tied that person with the nylon rope with a tree and severely beat him with kicks and fist blows. One more accused namely Suryakant Gaikwad, who was Sweeper also assaulted said Samad with fist and kick blows, as well as a stick. Samand was tied to the tree for about two hours till the Manager came there. By that time, froth was coming out from his mouth. As directed by the Manager he was taken to the hospital but on the way he died. Post-mortem report reveals that he had suffered several injuries on the abdomen and head and because of that he had died.

3. The applicants claim to be innocent and

according to them, they are made scapegoat as they are not regular employees of the company and attempt is being made to save the real culprits, who are employees of company. The applicants, as security guards, are engaged on contract basis. The defence of the applicants can be looked into at the time of trial. Even though, none of the applicants used any weapon, it appears that they had severely beaten the deceased on his abdomen and as a result of the same he died. Use of reasonable force to nab a thief could be justified but in the present case, said Samad was already caught by another employee of the company and he was handed over to the present applicants, who were security guards. They also tied him with tree, so that he could not run away. Prima facie, there was no justification to beat him so severely. If the applicants are granted bail, there is every possibility that witnesses may be tampered with and as the applicants are not from Maharashtra, there is every possibility that they may also abscond. In these circumstances, I find that it will not be in the interest of justice to grant bail to the applicants.

4. For the aforesaid reasons, application stands

rejected.

(J.H. BHATIA, J.)